

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 02-0027  
SALES/USE TAX  
For The Tax Periods: 1998, 1999**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Use Tax – Best Information Available**

**Authority:** IC 6-2.5-3-2, IC 6-8.1-5-4, IC 6-8.1-5-1.

The Taxpayer protests the Department's assessment of use tax based on incomplete records.

**STATEMENT OF FACTS**

Taxpayer was audited for the calendar years of 1998 and 1999 for sales and use tax. Taxpayer owns and leases towers and related antennas to radio station, cellular telephone companies, and private businesses and industries. Taxpayer was a registered retail merchant for the entire period of the audit. Taxpayer did not file returns for the audit for periods January 1, 1998 through June 30, 1999. More facts supplied as necessary.

**I. Use Tax: Best Information Available**

**DISCUSSION**

Taxpayer was assessed use tax on purchases for parts of the tower as well as certain purchases charged to utilities account with no invoices to show tax charged and paid on utilities consumed. "An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana, if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC 6-2.5-3-2.

Taxpayer claims that the business records were destroyed in a fire in November 1999 which occurred at one of the Taxpayer's other businesses. The fire was verified. Taxpayer also states that all utilities were purchased in Indiana and sales tax was paid. Taxpayer notes that this could be determined by referring back to a previous audit.

IC 6-8.1-5-4 states

- (a) Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

In addition, IC 6-8.1-5-1 states in part:

- (a) If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department...

“The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made” *Id.* Here, the auditor used the information that was available to him in an attempt to reconstruct the business activities in the periods assessed. While Taxpayer asserts that the auditor did not work with them under the circumstances, Taxpayer ultimately has the duty to maintain his business records. Taxpayer has not demonstrated that they took any significant steps in reacquiring copies of the lost records. Nor, have they provided any evidence of the timely filing of returns associated with sales/use tax based on the missing records which were in their possession prior to the fire.

### **FINDING**

Taxpayer's protest is denied.